

BRB Nos. 98-0723 BLA
and 98-0723 BLA-A

DAVID ALLEN RICHARDSON)
)
 Claimant-Petitioner)
 Cross-Respondent)
 v.) DATE ISSUED:
)
 COWIN & COMPANY, INCORPORATED)
)
 Employer-Respondent)
 Cross-Petitioner)
)
 and)
)
 CENTENTENIAL CONSTRUCTION,)
 INCORPORATED,)
 JEWELL RIDGE MINING/)
 SEA "B" MINING/)
 THE PITTSTON COMPANY)
)
 Employers-Respondents)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Respondent) DECISION and ORDER

Appeal of the Decision and Order of Richard T. Stansell-Gamm,
Administrative Law Judge, United States Department of Labor.

David Allen Richardson, Raven, Virginia, *pro se*.

William H. Howe and Mary Lou Smith (Howe, Anderson & Steyer,
P.C.), Washington, D.C., for employer-respondent, cross-petitioner.

Timothy W. Gresham (Penn, Stuart & Eskridge), Abingdon, Virginia, for
employer respondent, cross-respondent.

Dorothy L. Page (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of legal counsel,¹ appeals and employer cross-appeals the Decision and Order (97-BLA-1372) of Administrative Law Judge Richard T. Stansell-Gamm denying benefits on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). The administrative law judge credited claimant with thirteen years and four months of coal mine employment and adjudicated the claim pursuant to 20 C.F.R. Part 718. The administrative law judge found that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Accordingly, benefits were denied. On appeal, claimant generally contends that the evidence is sufficient to establish total disability due to pneumoconiosis arising from coal mine employment. Employer Cowin & Company, Inc., responds, urging affirmance of the denial of benefits and also contends, on cross-appeal, that the administrative law judge erred in finding that it was the properly designated responsible operator. Employer Sea "B" Mining Company, responds, urging affirmance of the administrative law judge's denial of benefits and his designation of the responsible operator. The Director, Office of Workers' Compensation Programs, responds, urging affirmance of the administrative law judge's designation of the responsible operator.

¹Tim White, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Mr. White is not representing claimant on appeal. See *Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, are supported by substantial evidence, and are in accordance with law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that he suffers from pneumoconiosis; that the pneumoconiosis arose out of coal mine employment; and that the pneumoconiosis is totally disabling. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure of claimant to establish any of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. In his consideration of the x-ray evidence, the administrative law judge rationally concluded that the x-ray evidence failed to establish the existence of coal workers' pneumoconiosis pursuant to Section 718.202(a)(1) as he correctly found that none of the x-ray readings was positive for the presence of pneumoconiosis. *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Trent, supra*; *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); Decision and Order at 11-17; Director's Exhibits 19-20, 37, 40-41, 44-47; Employer's Exhibits 3-4, 9-11. We, therefore, affirm the administrative law judge's finding that the x-ray evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1) as it is supported by substantial evidence.

With respect to Section 718.202(a)(2)-(3), the administrative law judge correctly found that none of the physicians of record concluded that the biopsy evidence established the existence of pneumoconiosis. Decision and Order at 17, 18; Director's Exhibits 37, 41; Employer's Exhibit 2. Moreover, the administrative law judge correctly found that the presumptions enumerated at Section 718.202(a)(3) are inapplicable to this claim as the record contains no evidence of complicated pneumoconiosis, see 20 C.F.R. §718.304; claimant filed his claim after January 1, 1982, see 20 C.F.R. §718.305; and this is not a survivor's claim, see 20 C.F.R. §718.306. Decision and Order at 11. Consequently, we affirm the

administrative law judge's finding that claimant is precluded from establishing the existence of pneumoconiosis pursuant to Section 718.202(a)(2)-(3). *Langerud v. Director, OWCP*, 9 BLR 1-101 (1986).

In weighing the medical opinions of record, the administrative law judge also rationally concluded that this evidence failed to establish the existence of pneumoconiosis by a preponderance of the evidence pursuant to Section 718.202(a)(4). *Perry, supra*. As none of the physicians of record diagnosed pneumoconiosis, the administrative law judge properly concluded that claimant failed to meet his burden of proof to establish the existence of pneumoconiosis by a preponderance of the medical opinion evidence. *Clark, supra; Perry, supra; Winters v. Director, OWCP*, 6 BLR 1-877 (1984); *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983); Decision and Order at 21-24. The Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Inasmuch as the administrative law judge properly weighed all of the medical opinions of record and rationally concluded that the preponderance of the evidence did not establish the existence of pneumoconiosis, we affirm the administrative law judge's finding pursuant to Section 718.202(a)(4). *Clark, supra; Perry, supra*. Claimant's failure to establish the existence of pneumoconiosis pursuant to Section 718.202(a), an essential element of entitlement under 20 C.F.R. Part 718, precludes an award of benefits thereunder. *Anderson, supra; Trent, supra*. Consequently, we affirm the administrative law judge's denial of benefits as it is supported by substantial evidence and in accordance with law. Moreover, we need not address employer's argument on cross-appeal challenging the administrative law judge's finding that it is the properly designated responsible operator since we affirm the denial of benefits and thus this case no longer presents any real case or controversy for adjudication. *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 110 S.Ct. 1249, 108 L.Ed.2d 400 (1990).

Accordingly, the Decision and Order of the administrative law judge denying benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge